

319.

COUNTY COMMISSIONERS—INSURANCE ON COUNTY FUNDS—FORGERY—NO AUTHORITY.

SYLLABUS:

County commissioners, in the absence of any statutory provision authorizing them to procure insurance against loss of public funds in the custody of the county treasurer by forgery, would have no authority to purchase such insurance and pay the premiums for same out of the county treasury.

COLUMBUS, OHIO, March 24, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your letter of recent date requesting my opinion as to whether or not a county may legally purchase "forgery" insurance and pay the premiums on this class of insurance out of the county treasury. It appears from a copy of the bond attached to your letter that the purpose of the bond is to indemnify the *Treasurer of Cuyahoga County* and a *county depository* against any loss occasioned by forgery.

Prior to the enactment of Section 2638-1, General Code, this office consistently held that inasmuch as county treasurers were by reason of the bond which they are required to give under Section 2633, General Code, insurers of public money coming into their hands, the county commissioners would have no authority to purchase burglary, robbery or forgery insurance and pay the premium on such insurance out of the county treasury. Thus, in *Opinions of the Attorney General for 1927*, Vol. II, page 874, it was held:

"County commissioners have no authority to purchase and pay for burglary or hold-up insurance for the county treasurer or for any other county officer, nor have they authority to pay for insurance against forgery for the county treasurer."

Again, the then Attorney General at page 916 held, as disclosed by the syllabus, that:

"In the construction of Section 2419, General Code, the words 'other means of security in the county treasury' should be construed as meaning means of physical security of like nature to the security provided for by the authorization to fur-

nish room, fireproof and burglary-proof vaults and safes and cannot be extended to mean authorization for the county commissioners to purchase and pay for from county funds burglary or hold-up insurance or insurance against forgery for the protection of the county treasurer.”

Since the above opinions were rendered by this office, the legislature in 1929 enacted Section 2638-1, General Code, which reads as follows:

“Upon request of the county treasurer of any county, the county commissioners of such county may authorize the county treasurer to procure insurance against any loss of public funds or securities, in the custody of the county treasurer, by burglary or robbery. The amount of insurance to be procured shall be in such sum as may be agreed upon by the county treasurer and the county commissioners. All costs of such insurance shall be paid by the county as provided in Section 2460 of the General Code.”

The legislature in enacting the above section expressly authorized the county commissioners upon the request of the county treasurer to procure insurance against loss by burglary or robbery and further provided that all costs of such insurance shall be paid out of the county treasury. It would seem, therefore, that the holdings of the opinions above referred to as they relate to burglary or robbery insurance are no longer applicable. Thus, it was held in Opinions of the Attorney General for 1929, Vol. II, page 1395:

“Insurance may lawfully be procured by a county treasurer against any loss of public funds or securities in his custody by burglary or robbery, as provided by the terms of House Bill No. 79 of the 88th General Assembly.”

The House Bill referred to in the above opinion is now Section 2638-1, *supra*.

A reading of the bond indicates that it is given for the protection of the county treasurer and a county depository and not for the protection of the public. The county treasurer has a personal responsibility to account for all moneys coming into his possession in his official capacity and by reason of the bond required under Section 2633, General Code, which he is required to give before assuming his duties, the public is fully secured and will not suffer by reason of any loss to the treasurer on account of forgery.

Inasmuch as the legislature did not, by enacting Section 2638-1, supra, authorize the county commissioners to procure insurance against loss by reason of forgery, the reasoning and conclusions reached in the holdings of this office prior to the enactment of Section 2638-1, supra, as they relate to forgery insurance, are still applicable.

Specifically answering your inquiry, it is my opinion that the county commissioners, in the absence of any statutory provision authorizing them to procure insurance against loss of public funds in the custody of the county treasurer by forgery, would have no authority to purchase such insurance and pay the premiums for same out of the county treasury.

Respectfully,

HERBERT S. DUFFY,
Attorney General

320.

HOUSE BILL No. 701—BOARDS OF EDUCATION—DISCRETIONARY POWERS—ANTICIPATION OF FUNDS.

SYLLABUS:

Section 2 of House Bill 701, 116 O. L. Pt. 2 page 356, confers upon the board of education discretionary power as to whether money be borrowed in anticipation of the amount so certified to them by the Director of Education acting under the provisions of Section 1 of said act.

COLUMBUS, OHIO, March 24, 1937.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date which reads as follows:

“The Allen Township Board of Education has submitted to me the following question on which I would like to have your opinion:

Is it necessary for the school board to borrow on the certification of the Director of Education the amount he certifies, under House Bill No. 701, in order for the Board of Education to receive the amount so certified by the Director to the board of education?

Various boards of education in this county have received